

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5269 of 1997

to

FIRST APPEAL No 5272 of 1997

with

CIVIL APPLICATION No 12141 of 1997

to

CIVIL APPLICATION No 12144 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHIEF OFFICER, UNJHA NAGAR PALIKA

Versus

HIRABEN WD/O MODI BHUDERBHAI MOHANBHAI

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Appearance:

MR YV SHAH for Appellant

MR MAHESH BHAVSAR for Respondent No. 1

MR MUKESH PATEL, AGP, for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/10/98

ORAL JUDGEMENT

1. As these first appeals have arisen from one and the common acquisition of lands acquired under common notification under section 4 of the Land Acquisition Act, 1894, the same are being taken up for hearing together and are being disposed of by this common order. The arguments are made with reference to First Appeal No.5269 of 1997.

2. Notification under section 4 of the Act, 1894 was published on 8-4-1982. Notification under section 6 of the Act, 1894 was published on 4-4-1985. The Land Acquisition Officer passed the award on 29-11-1986 and he awarded compensation under different heads, details of which are as under:

Rs.104-70 compensation for land at the rate of Rs.125/- per sq. mt.

Rs.4179/- compensation for property.

The claimants were not satisfied with this award of compensation and on their request the matter has been referred to the civil court. In the Reference Court they claimed compensation, details of which are as under:

Rs.1,50,000/- towards additional compensation

Rs.14,000/- towards demolition cost

Rs.50,000/- reconstruction cost.

Under the impugned award, the Reference Court has awarded additional compensation i.e. compensation for land at the rate of Rs.350/- per sq. mt.. Rs.5000/- for demolition cost and Rs.15,000/- compensation for construction of shop. Hence, these appeals before this Court.

3. Learned counsel for the appellant made threefold contentions before this Court. Firstly, it is contended that the award of compensation for land at the rate of Rs.350/- per sq. mt. is towards the higher side. Second contention has been made that the award of compensation for demolition and reconstruction of shop is highly excessive. Lastly, it is contended that the award of additional compensation under section 23 (1)(A) of the Act, 1894 from the date of notification under section 4 to the date of the award, is illegal. Carrying this contention further, learned counsel for the appellant contended that the Reference Court has arbitrarily assessed the compensation under the heads, compensation for demolition of property and compensation for reconstruction thereof. The claimants-respondents have

not produced on record of the Reference Court any evidence regarding the expenditure of demolition and reconstruction of shop. Still in the absence of any evidence, the Reference Court has awarded highly excessive amount under both the counts.

4. Learned counsel for the respondents-claimants, on the other hand, supported the award made by the learned Reference Court. However, the learned counsel for the respondents-claimants contended that the award of the additional compensation under section 23 (1) (A) of the Act, 1894 from the date of publication of notification under section 4 to the date of the award is not correct.

5. Learned counsel for the State Government supported the contentions made by the learned counsel for the appellant. In addition to that, he contended that the award of compensation for land at the rate of Rs.350/per sq. mt. is highly excessive, though the result of the award on this excessive rate for the land is nodoubt a small amount but still it will adversely affect to the Government in other cases.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. In the award, the Reference Court has mentioned that the opponents are further ordered to pay additional amount of compensation at the rate of 12% p.a. on additional amount of compensation awarded to the claimants according to the provisions of section 23 (1) (A) of the Act, 1894. From the reading of this award, I am satisfied that the Reference Court was perfectly correct in its approach and this additional amount of compensation at the rate of 12% has been awarded according to the provisions of section 23 (1) (A) of the Act, 1894. However, learned counsel for the appellant has drawn the attention of this court on the copy of the award (decree) where the amount of additional compensation at the rate of 12% is payable under section 23 (1)(A) of the Act, 1894 has been ordered from the date of publication of notification under section 4 of the Act, 1894 to the date of the award. This is clearly a clerical error in drawing of the decree (award). It is true that this decree/award has been signed by the Presiding Officer of the Court but it is equally true that this decrees/awards are being drawn by the clerical staff and this is clearly an error apparent on the face of the decree. It is no more res integra that the decree should have been in consonance with the judgment and it cannot be read and it cannot be beyond what the judgment

contemplates. I fail to see any justification in filing of these appeals by the appellant against the award to the extent of this error therein. It is apparently a clerical error and instead of filing these appeals before this Court the appellant could have pointed out the same to the Reference Court by filing an application under section 152 of the Code of Civil Procedure. Section 152 of the Code of Civil Procedure provides that if there is any clerical or arithmetical mistake in the judgment, it can be corrected by the court itself. At one point of time, though I thought of reminding the learned counsel for the appellant this provision of Code of Civil Procedure and asking him to go for correction of the decree but that course I am not adopting in this case for the reason that the other side is also not opposing for the necessary correction to be made in the decree as well as the decree is clearly in violation of provisions of section 23 (1) (A) of the Act, 1894. Section 23 (1) (A) of the Act, 1894 reads as under:

23(1-A) : In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

8. The Reference Court could have awarded the compensation under this provision only for the period from the date of the publication of notification under section 4 (1) of the Act, 1894 to the date of the award by the L.A.O. or to the date on which the possession of lands have been taken, whichever is earlier. It could not have awarded the compensation till the date of award passed by the Reference Court. To that extent, the decree of the Reference Court deserves to be corrected and it is accordingly corrected. It is ordered that the additional compensation as provided under section 23 (1) (A) of the Act, 1894 is permissible to the claimants-respondent only for the period from the date of publication of notification under section 4 (1) of the Act, 1894 till the date of the award by the L.A.O. or the date of taking over the possession of the lands, whichever is earlier.

9. The Land Acquisition Officer has awarded in this case the compensation for the acquisition of lands at the

rate of Rs.125/- per sq. mt.. The Reference Court has awarded the compensation for lands at the rate of Rs.350/- per sq. mt.. Though there is a difference in between the two figures and the rate at which the compensation is awarded by the Reference Court for the lands may be towards the higher side but the end product thereof is a very small amount of compensation under the head of land compensation. In the first case, the total amount under this head awarded is Rs.294/-. In second case, it is Rs.455-20. In third case, it is Rs.1302/and in fourth case it is Rs.910-55. Looking to the smallness of the amount of compensation awarded under this head, I do not consider it to be appropriate to go on and decide this question on merits. However, it is made clear that this Court is not adjudicating on this issue in these appeals only on the ground of smallness of the claim awarded under this head by the Reference Court. This decision may not be taken to be as if this Court is confirming the award of Reference Court awarding therein the compensation for acquisition of lands at the rate of Rs.350/- per sq. mt..

10. Now the only question remains to that part of the award of the Reference Court under which it has awarded the compensation for demolition and reconstruction of shop. It is true that the claimants-respondents have not filed any proof of expenditure of demolition and reconstruction of shop but the learned counsel for the appellant does not dispute that the shop has been demolished and reconstruction has been made. Only insistence is that the amount is towards the higher side. It is equally true that the Reference Court has observed that the claimants have given out exaggerated figures in regard to expenditure of demolition, and expenditure of reconstruction. However, the learned counsel for the appellant has not disputed that due to acquisition of lands of shop, the holder thereof i.e. the respondents-claimants have made alteration in the shop. This alteration was necessitated because of the acquisition of the part of the land of the shop. So there was demolition and reconstruction but to what extent demolition and reconstruction was there and what actual expenditure has been incurred for which nothing has been proved by producing material evidence by the claimants-respondents. But looking to the fact that these are commercial premises in the main market and the demolition and reconstruction was there, some amount has to be awarded, and while awarding the amount of compensation under these heads, there cannot be any mathematical or scientific method. For awarding the compensation, it is not unknown that sometimes the Courts

have to guess and sometimes they may act arbitrary also. The amount of compensation which has been awarded for demolition and reconstruction of shop may be towards the higher side but the appellants are also unable to give out actual figure of expenditure incurred by the claimants-respondents under these two heads.

11. Learned counsel for the appellant has contended that the Reference Court should have relied upon the estimated figures given for demolition and reconstruction of shop by the Engineer. I do not find any substance in this contention for the two reasons. Firstly, no such contention appears to have been raised by the appellant before the Reference Court. I do not find any reference of this contention as well as the document of the alleged estimation of Engineer in the award. Secondly, in the memo of appeals also this contention has not been raised nor the document has been referred. In the absence of any such contention in the memo of appeals and the document before this Court coupled with the fact that this point was not raised before the Reference Court, this contention cannot be permitted to be raised. During the course of arguments, learned counsel for the appellant despite of repeatedly asking by the Court is unable to show what is the estimation of this demolition and reconstruction made by the Engineer of the Government department. In these facts and circumstances though the award of compensation under the head of demolition and reconstruction may be slightly towards the higher side but in the absence of material evidence from the side of the appellant, no interference otherwise is called for in the award by this Court. The Reference Court has, on the basis of appreciation of the evidence produced by the parties, determined this figure and even if it is considered to be slightly towards the higher side and if any reduction has been made therein by this Court then it will be only a reduction without there being any supporting material or evidence. It is not the case where the Reference Court has not kept in mind the well settled proposition of law that while assessing the compensation under these heads all caution and care has to be taken note of. The Reference Court has taken that the figures of demolition and reconstruction expenditure given by the claimants-respondents are exaggerated but it is admitted fact that the claimants-respondents have undertaken expenditure under the head of demolition and reconstruction and compensation may be awarded and accordingly it has been awarded. Even if on the given facts two views are possible then the view taken by the Reference Court ordinarily should not have been interfered with by the appellate court.

12. In the result, all these appeals are partly allowed to the extent as aforesaid and rest of the claim made by the appellant in these appeals are dismissed. No order as to costs. The civil applications accordingly stand disposed of.

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